

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

MARTIN ALVAREZ a/k/a EDUARDO  
LOPEZ, on behalf of himself, FLSA Collective  
Plaintiffs, and the Class,

Plaintiff,

– against –

SCHNIPPER RESTAURANTS LLC, et al.,

Defendants.

**ORDER**

16 Civ. 5779 (ER)

Ramos, D.J.:

On December 17, 2018, the parties submitted an application to the Court for preliminary approval of the class settlement. Doc. 105. On November 1, 2019, the Court declined to approve the agreement without prejudice for four reasons: the proposed settlement contained an overbroad release and an improper confidentiality clause, and it failed to explain the proposed tax allocation, as well as the possible range of plaintiffs' recovery. Doc. 111. Before the Court is the parties' revised application for an order (1) granting preliminary approval of the class settlement (the "Revised Agreement"); (2) conditionally certifying the settlement class under Federal Rule of Civil Procedure 23(b)(3) and 29 U.S.C. § 216(b); (3) appointing class counsel; and (4) approving the proposed notice and schedule for final settlement approval. For the reasons stated below, the motion is GRANTED.

**I. PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**

In response to the Court's Order, on November 21, 2019, the parties submitted a Revised Agreement that does not contain an overbroad release, has modified confidentiality and tax treatment clauses, and adequately explains the range of possible recovery. Doc. 112. Accordingly, the Court finds that the Revised Agreement complies with *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015).

## **II. CONDITIONAL CERTIFICATION OF CLASS AND APPOINTMENT OF CLASS COUNSEL**

For the reasons stated in its November 1, 2019 Order, the settlement class is preliminarily certified, and Lee Litigation Group, PLLC is appointed lead counsel for the settlement class.

## **III. APPROVING THE PROPOSED NOTICE AND NOTICE SCHEDULE**

The proposed notice appears to be the best notice practical under the circumstances and appears to allow potential class members a full and fair opportunity to consider the parties' Revised Agreement and to develop a response. The notice fairly, plainly, accurately, and reasonably informs class members of: (1) appropriate information about the nature of this litigation, the settlement class at issue, the identity of class counsel, and the essential terms of the settlement agreement; (2) appropriate information about class counsel's forthcoming application for attorneys' fees and other payments that will be deducted from the settlement fund; (3) appropriate information about how to participate in the settlement; (4) appropriate information about this Court's procedures for final approval of the settlement; (5) appropriate information about how to challenge or opt-out of the settlement; and (6) appropriate instructions as to how to obtain additional information regarding this litigation and the settlement.

The proposed plan for distributing the notice appears to be a reasonable method calculated to reach all class members who would be bound by the settlement. This satisfies the notice requirements of Federal Rule of Civil Procedure 23 and all other legal and due process requirements.

## **IV. CONCLUSION**


Accordingly, the Court hereby orders as follows:

- The Revised Agreement is preliminarily approved.
- The settlement class is preliminarily certified.
- Lee Litigation Group, PLLC is appointed lead counsel for the settlement class.

- Rust Consulting is appointed as Claims Administrator.
- The proposed notice is approved.
- Within fifteen days of entry of this Order, Defendants will provide Rust Consulting with an electronic list of the last known addresses for potential class and collective members.
- Within thirty days of entry of this Order, Rust Consulting will mail the notice to the last known address of each potential class and collective member. Rust Consulting will take reasonable steps to obtain the correct address of any class or collective member whose notice is returned as undeliverable and, where correct addresses are obtained, will attempt to re-mail the notice.
- Class and collective members will have sixty days from the date of mailing to submit claim forms, opt-out requests, or object to the settlement.
- A hearing pursuant to Rule 23(e) will be held before the Court on **May 13, 2020 at 11:30 AM**, at the United States District Court, Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007

SO ORDERED.

Dated: December 16, 2019  
New York, New York

  
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Edgardo Ramos, U.S.D.J.